S.B. CIVIL WRIT PETITION NO.629/2005

Darshan Singh vs. D.J., Sri Ganganagar & ors.

Date : 1.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S.L. Jain, for the petitioner

- - - - -

Heard learned counsel for the petitioner.

The petitioner is aggrieved by the orders of two courts below as the petitioner's objection against the admissibility of document dated 9.2.2001 has been rejected by the trial court vide order dated 21.8.2004 and the revisional court vide order dated 13.12.2004 dismissed the revision of the petitioner, upholding the order of the trial court.

According to learned counsel for the petitioner, the Annex.1 described as an agreement is in fact a bond and is not a promissory note and since the document is not properly stamped, therefore, it cannot be admitted in evidence. Learned counsel for the petitioner in this regard relied upon judgment of this Court delivered in the case of Bherulal vs. Ghisulal reported in 1958 R.L.W. Page 179 and a judgment of Allahabad High Court delivered in the case of Kartey Singh vs. Iftikhar Ahmad reported in A.I.R. 1981 (Allahabad) page 386.

According to learned counsel for the petitioner,

the essential features of bond are (1) an undertaking to pay, (2) the sum of money which need not necessarily be certain, (3) the payment will be to another person named, (4) it should be signed by the maker, (5) it should be attested by a witness and (6) it must not contain any writing making it payable to order or bearer.

According to learned counsel for the petitioner, Annexure-1 contains all the requisite features of bond as enumerated above.

I have considered the submission of learned counsel for the petitioner and perused the reasons given in both the judgments cited above.

It is clear from the Annexure-1 that it contains “a promise to pay”. It contains a term expressly in the instrument itself that a sum of money will be payable by the person executing the document. It also contains an express condition expressing that it will be payable to a person expressed in the deed itself and which is a particular person. It also contains no word prohibiting transfer or indicating an intention that it shall not be transferable. Section 13 of the Negotiable Instruments Act, 1881 makes it a negotiable instrument.

As per the definition of Promissory Note under Section 2(22) of the Stamp Act, Promissory Note means a Promissory Note as defined by the Negotiable

Instruments Act, 1881 and it includes a note promising the payment of any sum of money. The document Annexure-1 contains promise to pay a sum named in the document.

In view of the above, it is clear that the document in question is a promissory note and not a bond.

I do not find any illegality in the impugned orders so as to interfere in the same under Article 227 of the Constitution of India.

Accordingly, this writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya